# STATE OF MICHIGAN

# COURT OF APPEALS

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| AUTUMN RANJAN,<br><br>Plaintiff-Appellant,<br><br>v<br><br>SATYA RANJAN,<br><br>Defendant-Appellee. | UNPUBLISHED<br>January 2, 2014<br><br>No. 314211<br>Macomb Circuit Court<br>Family Division<br>LC No. 2006-007017-DM |

Before: MURPHY, C.J., and CAVANAGH and STEPHENS, JJ.

PER CURIAM.

Plaintiff appeals as of right the order denying her motions to modify custody and to permit testimony of Amy Distelrath, an investigator for the Friend of the Court, and granting defendant's motion for costs of $3,910 from plaintiff to defendant's counsel. We affirm.

Plaintiff first argues that the trial court erred in finding that she failed to establish proper cause or a change of circumstances. We disagree.

"All orders and judgments of the circuit court shall be affirmed on appeal unless the trial judge made findings of fact against the great weight of evidence or committed a palpable abuse of discretion or a clear legal error on a major issue." MCL 722.28; *Pierron v Pierron*, 486 Mich 81, 85; 782 NW2d 480 (2010). Specifically, a trial court's determination regarding whether a party has demonstrated proper cause or a change of circumstances is reviewed under the great weight of the evidence standard. *Corporan v Henton*, 282 Mich App 599, 605; 766 NW2d 903 (2009).

"Before modifying or amending a custody order, the circuit court must determine whether the moving party has demonstrated either proper cause or a change of circumstances to warrant reconsideration of the custody decision." *Dailey v Kloenhamer*, 291 Mich App 660, 665; 811 NW2d 501 (2011); citing MCL 722.27(1)(c), *Vodvarka v Grasmeyer*, 259 Mich App 499, 508-509; 675 NW2d 847 (2003). The moving party has the burden of proving by a preponderance of the evidence that either proper cause or a change of circumstances exists. *Vodvarka*, 259 Mich App at 509. The court is not required to conduct an evidentiary hearing on this issue. *Corporan*, 282 Mich App at 604. "The goal of MCL 722.27 is to minimize unwarranted and disruptive changes of custody orders, except under the most compelling circumstances." *Id*. at 603. If the moving party fails to establish either proper cause or a change of circumstances, the trial court may not hold a child custody hearing. *Id*. at 603-604.

To establish proper cause, there must be appropriate grounds that have or could have a significant effect on the child's well-being such that reevaluation of custody should be made. *Vodvarka*, 259 Mich App at 511. The ground or grounds establishing proper cause "should be relevant to at least one of the twelve statutory best interest factors[.]" *Id*. at 512.

Likewise, a change of circumstances requires that a movant prove, "since the entry of the last custody order, the conditions surrounding custody of the child, which have or could have a *significant* effect on the child's well-being, have materially changed." *Id*. at 513 (emphasis in original). "[N]ot just any change will suffice, for over time there will always be some changes in a child's environment, behavior, and well-being." *Id*. "Instead, the evidence must demonstrate something more than the normal life changes (both good and bad) that occur during the life of a child, and there must be at least some evidence that the material changes have had or will almost certainly have an effect on the child." *Id*. at 513-514.

Plaintiff failed to establish by a preponderance of the evidence the existence of proper cause or a change of circumstances. It is noteworthy that the majority of plaintiff's claims were previously alleged in several motions to change custody and to modify parenting time, each of which were denied by the trial court in finding that plaintiff failed to establish proper cause or a change of circumstances. In her most recent motion to modify custody, plaintiff made four arguments in her attempt to establish proper cause or a change of circumstances: (1) defendant physically abused S. R. in April of 2012; (2) defendant verbally abused S. R. and D. R.; (3) the children feared defendant as a result of the abuse; and (4) the children's poor academic performances. Tawnne Barerra, a Children's Protective Services (CPS) worker for the Department of Human Services (DHS), testified that in April of 2012, defendant grabbed S. R. by the arm and pulled him off of a chair and onto the floor. S.R. suffered bruises on his arm, lower leg, and hip as a result. The incident was reported to CPS by Beaumont Hospital. Barerra testified that her predecessor incorrectly classified the case as high risk, when, in fact, the case was actually low risk. Plaintiff also presented evidence that defendant teased the children by calling them "names" and that defendant verbally threatened D. R. with a spatula. On the other hand, Barerra testified that there was no evidence of any act of violence by defendant directed against the children since the April of 2012 incident. Although Fernande Ayoub, a psychologist for Believe, Trust, and Change Counseling, testified on behalf of plaintiff that the children showed symptoms of depression, had anxiety, and feared defendant, Barerra testified that she visited the children for five hours over two occasions and "began to suspect that things weren't exactly the way it seemed." The children seemed very happy and relaxed:

> They were running around. Playing. Having fun. Playing their video games. At one point [D. R.] came running down the stairs and jumped into his father's arm for a hug. I mean, everything seemed very relaxed and they seemed to have is [sic] a nurturing relationship. They seemed to [sic] appropriately bonded.

In addition, Barerra opined that there was no imminent risk of harm to the children. No criminal prosecution or child custody proceedings resulted from the April of 2012 incident. The trial court specifically found Barerra to be "very credible and very earnest in her testimony," and this Court will not interfere with the trial court's credibility determinations. See *Berger*, 277 Mich App at 705-706.

Moreover, plaintiff's claim that the children's academic performances were declining did not amount to proper cause or a change in circumstances. At the time of the evidentiary hearing, D. R. was repeating the second grade and S. R.'s grades were "low," but improving. However, the children's poor academic performances do not show anything "more than the normal life changes (both good and bad) that occur during the life of a child. . . ." See *Corporan*, 282 Mich App at 608-609, citing *Vodvarka*, 259 Mich App at 513. Therefore, the trial court's finding that plaintiff failed to establish by a preponderance of the evidence the existence of proper cause or a change of circumstances was not against the great weight of the evidence. See *Vodvarka*, 259 Mich App at 509.

Given that plaintiff failed to establish either proper cause or a change of circumstances, plaintiff's argument that the trial court was required to hold a child custody hearing is misguided. See *Corporan*, 282 Mich App at 603-604 (if the moving party fails to establish either proper cause or a change of circumstances, the trial court may not hold a child custody hearing). In addition, plaintiff claims that the trial court should have permitted her to call defendant and the children to testify to the abuse. However, plaintiff failed to argue this in the trial court and provides no authority on appeal to support her position. An appellant may not merely announce her position and leave it to this Court to discover and rationalize the basis for her claims, nor may she give issues cursory treatment with little or no citation of supporting authority. *Peterson Novelties, Inc v City of Berkley*, 259 Mich App 1, 14; 672 NW2d 351 (2003).

Moreover, plaintiff contends that the trial court did not allow her to complete her cross-examination of Barrera. The trial court instructed the parties that it was conducting a limited evidentiary hearing. After plaintiff repeatedly questioned Barrera regarding whether she performed a risk assessment when she received the case, the trial court, recognizing that the testimony was cumulative, gave plaintiff a time limit to finish her cross-examination. Accordingly, the trial court did not err because it was permitted to "exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment." MRE 611(a).

Likewise, plaintiff claims error in the court's decision to deny plaintiff's motion to permit Distelrath's testimony. Before the evidentiary hearing, the trial court determined at the original motion hearing, and in a subsequent order, that it would hear testimony from only Ayoub and Barrera. After it heard the testimony, the trial court would make its determination whether plaintiff established proper cause or a change of circumstances. Plaintiff fails to note that the trial court was not required to conduct an evidentiary hearing on the issues of proper cause or a change in circumstances. See *Corporan*, 282 Mich App at 604. Plaintiff also fails to cite any authority to support her contention that the trial court committed error in denying her motion to permit Distelrath's testimony. Plaintiff may not merely announce her position and leave it to this Court to discover and rationalize the basis for her claims, nor may she give issues cursory treatment with little or no citation of supporting authority. *Peterson Novelties*, 259 Mich App at 14. Therefore, the trial court did not err in determining that plaintiff failed to establish the existence of proper cause or a change of circumstances, which was necessary for the court to hold a child custody hearing. See *Corporan*, 282 Mich App at 603-604.

Plaintiff next argues that the trial court erred in awarding costs to defendant. We disagree.

An objection to an attorney fee award may not be raised for the first time on appeal. *Jansen v Jansen*, 205 Mich App 169, 173; 517 NW2d 275 (1994). Plaintiff failed to object to the attorney fee award in the trial court. This Court may decline to review plaintiff's unpreserved claim that the trial court erred in awarding attorney fees unless the lack of review would result in manifest injustice. See *Milligan v Milligan*, 197 Mich App 665, 671; 496 NW2d 394 (1992).

A party may be awarded attorney fees in domestic relations cases pursuant to MCR 3.206(C). *Reed v Reed*, 265 Mich App 131, 164; 693 NW2d 825 (2005). MCR 3.206(C) provides:

> (1) A party may, at any time, request that the court order the other party to pay all or part of the attorney fees and expenses related to the action or a specific proceeding, including a post-judgment proceeding.
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> (2) A party who requests attorney fees and expenses must allege facts sufficient to show that
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> (a) the party is unable to bear the expense of the action, and that the other party is able to pay, or
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> (b) the attorney fees and expenses were incurred because the other party refused to comply with a previous court order, despite having the ability to comply.

The party requesting attorney fees bears the burden of proving they were incurred and that they were reasonable. MCR 3.206(C)(2); *Reed*, 265 Mich App at 165-166. In addition, an award of attorney fees is authorized "where the party requesting payment of the fees has been forced to incur them as a result of the other party's unreasonable conduct in the course of litigation." *Reed*, 265 Mich App at 165, quoting *Stackhouse v Stackhouse*, 193 Mich App 437, 445; 484 NW2d 723 (1992). "[T]he attorney fees awarded must have been incurred because of misconduct." *Reed*, 265 Mich App at 165.

Plaintiff filed several motions within a 13 month period to modify custody or change parenting time. The trial court denied each of plaintiff's motions. In denying plaintiff's latest motion to modify custody, the trial court specifically explained:

> What it appears to this Court that the plaintiff simply does not accept the rulings that have [sic] made and continues to want to relitigate this matter rather than appeal it. To file the same petition over and over to cause further expense in the process. So there is a request made by Mr. Friedman for costs in this matter. I would further term the litigation at this stage to be repetitive, to be unfounded and, in fact, to be vexatious.

Therefore, the trial court did not err in determining that defendant was forced to incur costs as a result of plaintiff's unreasonable conduct in the course of litigation. See *id.*

Plaintiff does not contend that the attorney fees were unreasonable, but argues that she did not have an opportunity to contest defendant's motion for attorney fees. However, the trial court reviewed the affidavit submitted by defendant's attorney, and conducted a hearing regarding defendant's request for attorney fees and the reasonableness of the fees incurred. See *id*. at 166 ("When requested attorney fees are contested, it is incumbent on the trial court to conduct a hearing to determine what services were actually rendered, and the reasonableness of those services."). Plaintiff did not object in the lower court to the attorney fee award. Therefore, the trial court did not err in awarding attorney fees from plaintiff to defendant.

Affirmed.

/s/ William B. Murphy
/s/ Mark J. Cavanagh
/s/ Cynthia Diane Stephens